



HM Courts &
Tribunals Service

First-tier Tribunal Tax Chamber

Making an appeal Explanatory leaflet

1. HM Courts & Tribunals Service

HM Courts & Tribunals Service is part of the Ministry of Justice and provides administrative support for the Tribunals' judiciary who hear cases and decide appeals. The tax appeals system was created on 1 April 2009, and this provides for tax appeals to be heard in a First-tier Tax Chamber, with a right of appeal with permission to the Upper Tribunal. The tax appeals system is totally independent of Her Majesty's Revenue and Customs (HMRC).

2. About this leaflet

This leaflet is designed to provide you with useful information about how to appeal against a decision of HMRC and how to make your appeal to the Tax Chamber of the First-tier Tribunal. We explain what decisions can be appealed against and how you may bring a case before the tax tribunal. This leaflet aims to give you the essential information you need to make your appeal, though it cannot cover all circumstances.

3. What is the Tax Tribunal?

The First-tier Tribunal is divided into several Chambers, one of which is the Tax Chamber. Throughout this leaflet this Tax Chamber is referred to as the tax tribunal. The tax tribunal hears the full range of appeals against HMRC decisions in relation to direct and indirect tax cases (explained in **paragraph 4** below). It has a single set of procedural rules giving it the flexibility to deal with the whole range of tax matters from the straightforward to the complex.

The tax tribunal is completely independent of HMRC, and cases are heard by Judges and other Members who are qualified to hear cases. **Annex A** provides a list of the types of tax appeal the tribunal can deal with.

4. Appeal rights

You can appeal only where the law gives you a right of appeal. Not every HMRC decision on a tax matter carries a right of appeal. When you do have a right of appeal the official letter from HMRC giving the decision will make this clear. The tribunal will determine, in doubtful cases, if it has the jurisdiction (which means the power) to deal with the dispute or not.

The main areas that the tribunal deals with are tax assessments and penalties. A list of the more common tax decisions made by HMRC that can be appealed to the tribunal can be found at **Annex A**. This is not a complete list and appeals against tax credit decisions are dealt with in the Social Entitlement Chamber and not by the tax tribunal.

Direct tax refers to tax that is usually levied directly off an organisation or an individual person, such as income tax or corporation tax. Indirect tax refers to tax that is usually levied on goods or services rather than on an individual or organisations, such as VAT or Customs Duties.

5. The Tribunal's powers

In deciding whether to appeal or not, you need to know what the tribunal can and can't do for you. The tribunal does not have unlimited powers. It can only do what the law gives it the power to do. Sometimes, if it accepts that your appeal is valid, it can replace the decision you are appealing against with the decision it thinks should have been made. In other cases it can only direct HMRC to reconsider their decision. If it does not accept that your appeal is valid it will uphold the decision you are appealing against.

6. Deciding whether to appeal

Before making your appeal, you should know that the tribunal cannot:

- Change the law. It has to apply the law as it stands, even if that leads to an outcome that you think is unfair
- Deal with administrative complaints about the conduct of HMRC officials. (If you are unhappy with the way HMRC have dealt with your tax affairs, please refer to their guidance on how to complain on the HMRC website <http://www.hmrc.gov.uk/dealingwith/complain.htm>.)

We cannot advise you whether you have a case or whether you are likely to win or lose your appeal nor can we tell you if you should appeal or not. HMRC, in their decision letter, will have told you whether you have a right of appeal to the tribunal.

Many people who make an appeal choose to get professional advice and support with it.

If you do decide to get advice, please do so at the earliest opportunity – when you are thinking about appealing. Please do not leave it until your appeal is well under way as we may not be able to put your appeal on hold whilst you are seeking representation. If you face a delay in getting advice please keep an eye on the time-limit for appealing.

In indirect tax appeals, the tax tribunal cannot hear an appeal that relates to disputed tax unless either you have paid or deposited the tax in dispute, or the Tribunal (or HMRC) have waived that requirement.

In direct tax, the payment of the tax in dispute is usually postponed pending the outcome of the appeal, and this is not an issue.

7. Hardship cases – Applying for your appeal to be heard without payment of the disputed tax

This relates to indirect tax only. The tribunal cannot hear an appeal which relates to disputed tax unless either you have paid or deposited the tax in dispute, or the Tribunal (or HMRC) have waived that requirement. If paying or depositing the disputed tax would cause you financial hardship, you should first write to HMRC asking them to waive the requirement. It is essential that you demonstrate your financial position to them so that they can consider the matter fully. If HMRC do not agree to waive the requirement, you may apply to the tribunal to consider the matter. If HMRC oppose your hardship request, we will arrange a tribunal hearing to decide whether or not to allow it.

To make an application for hardship to the tribunal after receiving HMRC's decision on the matter, you should complete the relevant section on the Notice of Appeal Form and send it to us.

8. Will I be expected to pay to go to Tribunal?

What follows applies to appeals and applications started since 1 April 2009.

In most tax cases each side will pay their own costs. Your own costs in preparing your appeal will depend on the difficulty of your case and whether you decide to handle your appeal yourself or instruct a tax adviser such as a barrister, solicitor or accountant.

However, in certain circumstances, the Tribunal may order one side to pay costs to the other. Those circumstances can include the case where one side has behaved unreasonably in the way they have carried out the case. Costs awards in those circumstances are quite rare.

There is a special rule that additionally applies to cases categorised by the tribunal as 'complex', where the winning party can ask for the losing party to pay its costs. However, you can choose to opt out of this rule, so that each party pays their own costs except where one side has behaved unreasonably. If your appeal is categorised as complex, you will be notified of this as soon as it has been categorised and given information about the implications, including your right to opt out of the 'complex' costs rule.

For appeals started before 1 April 2009 the Tribunal has discretion to order that they continue to be covered by the rules which applied before April 1 2009. These old rules are as follows: the General Commissioner Rules (where no one was liable to pay the other side's costs), the Special Commissioner Rules (where costs could only be awarded for wholly unreasonable conduct) and the VAT and Duties Tribunal's Rules (where costs could always be awarded at the tribunal's discretion). Costs can only be awarded under the new rules for such appeals if they could have been awarded under the old rules.

Applications for costs should be requested in writing no later than 28 days after the date on which the Tribunal sends the decision notice or notice of withdrawal and should be accompanied by a schedule of the costs and expenses claimed.

Community Legal Advice and other help

Free legal assistance is not available in most tax appeals, see www.communitylegaladvice.org.uk.

However, if you are on a low income, you may be able to get free help, for example from

- a qualified lawyer or accountant (although most will wish to charge a fee)
- a Citizens Advice Bureau
- TaxAid at <http://www.taxaid.org.uk>
- TOP – TaxHelp for Older People at <http://www.taxvol.org.uk> which provides help to those over 60.

Any of the above are also able to refer your case to the Bar Pro Bono Unit. This is a charity which provides free legal assistance from volunteer barristers, see www.barprobono.org.uk. You cannot apply directly to the Unit, but if your adviser refers the case, and it is accepted, a barrister will act for you before the Tribunal. It is strongly recommended that you make contact with an adviser in good time before the date of your appeal, as it may otherwise be impossible to provide support. Because

of resource constraints, the organisations listed above cannot guarantee that free legal help will be provided.

9. What should I do first?

Before you can make your appeal, you must first have an appeal-able written decision from HMRC with which you disagree. HMRC will have informed you of your options if you disagree with a decision.

You should consider your options seriously before appealing, including asking HMRC to look again at the decision as many disagreements can be settled by discussion or correspondence with HMRC without you actually having to go to a tribunal. HMRC are able to offer a formal internal review of your decision by a reviewer who will have had no previous involvement with your dispute. If you do not wish to engage these processes you can still appeal directly to the tribunal.

10. Time limit for appealing

You will normally have 30 days to appeal a disputed HMRC decision. If you make use of HMRC's review process you will have 30 days to appeal from the date they tell you the outcome. The time limit runs from both the original decision and any decision following review. The letter you receive from HMRC, both the original decision and any decision following review, will confirm the time you have for appealing.

If you are making your appeal outside the time limit, you must give reasons to the tribunal in writing.

11. Where do I obtain a Notice of Appeal?

Appeals to the tax tribunal must be made in writing. When you decide to make your appeal to the tax tribunal, you are strongly advised to complete a Notice of Appeal form and send it to the address at the bottom of the form.

You can download the Notice of Appeal form from our website at <http://www.justice.gov.uk/tribunals/tax>. If you do not have access to the internet, please phone us on **0300 123 1024** and we will send you a copy.

12. Completing the Notice of Appeal

The Notice of Appeal form is an important document as the details contained in this form will be used to process your appeal to a tribunal hearing, and to ensure we convene a panel that is appropriate for determining your case. It helps the tribunal to

consider your case fairly and also helps us contact you with information about how your appeal is progressing.

A separate information sheet with guidance notes on completing the Notice of Appeal is available on our website and will be sent to you with the Notice of Appeal if you ask us to send you one. Please phone us on 0300 123 1024 to request this.

The completed Notices of Appeal should be sent to:

HM Courts & Tribunals Service
First-tier Tribunal (Tax Chamber)
PO Box 16972
Birmingham
B16 6TZ

If you prefer to complete the Notice of Appeal electronically, you can send it to us at: **taxappeals@hmcts.gsi.gov.uk**.

The tribunal will acknowledge receipt of your appeal in writing. You will be given a Tribunal Service Reference Number which you should quote whenever you contact us. At this stage, we will also notify HMRC of your appeal.

13. Case Categorisation

When you appeal to the tax tribunal, it will put your appeal in one of four categories: Default Paper, Basic, Standard or Complex. Which of the four categories your appeal is allocated to is dependent on the nature and complexity of your appeal.

When we acknowledge your appeal, we will tell you in writing which category your appeal has been allocated, and how your appeal will proceed. We will keep you or your representative informed of progress throughout your appeal. Please note, however, that if you have a representative, we will only send correspondence to them. If you disagree with the way your case has been categorised you should contact the tribunal.

Default Paper cases, by their nature, are generally decided by the tribunal after reading the Notice of Appeal and the other written material provided by you and HMRC. Default Paper cases are dealt with without a hearing, though you may ask for your appeal to be decided at a hearing. If you or HMRC request a hearing or it is decided there should be a hearing by the tribunal, you will be expected to attend. HMRC will also send a representative to the hearing.

Basic category appeals are dealt with at informal hearings (**see paragraph 14** below).

The vast majority of appeals within the Standard and Complex categories will be registered at our Centre in Birmingham but will then be passed to other Tax tribunal offices in London, Manchester and Edinburgh. We will advise you in writing if we transfer your appeal.

Tax appeals are heard at a number of venues across the UK and we will, where possible, arrange for your appeal to be heard at a venue reasonably close to where you live or work. Sometimes, however, due to the size or complexity of an appeal, we may not be able to do this but we will let you know as soon as possible.

There may be occasions during the appeal process when judicial direction on your appeal will be sought. If this is required, we will inform you of the directions and any associated time limits which may apply. In more complex cases, you may be asked to attend a hearing at which a Judge will make directions.

14. Statement of Case and next steps

The next step will usually be for the tribunal to request a statement of case from HMRC, except in relation to basic category cases. A statement of case is a written statement of HMRC's position on your case. It will normally contain information such as the legislation under which the appealed decision was made, HMRC's position on the case and any other relevant information associated with the appeal.

Default Paper category (where there is no hearing)

A case categorised as default paper is generally decided when the tribunal has read the Notice of Appeal and other written material provided by you and HMRC. When we have notified HMRC that you have made an appeal against a decision which falls into this category, HMRC have 42 days to provide a statement of case to the tribunal. When the statement of case has been prepared, HMRC will send a copy to you.

You may provide a written response to the statement of case within 30 days of it being sent to you. You should send your response, if you wish to make one, to us and send a copy to HMRC. Please remember to quote your Tribunal reference number when writing to us and your HMRC reference number when corresponding with them. Unless you have asked for an oral hearing, the case will be decided by the tribunal when you have provided your response, or if you do not provide one, when the 30 day time limit has expired. The tribunal will send you its response as soon as possible after considering your case.

Basic Category (where there is an informal hearing)

The tribunal does not normally require a statement of case to be produced by HMRC for cases categorised as Basic. If your case is categorised in this way it will be listed for a hearing. You are expected to attend the hearing, when you will be given the opportunity to put forward your case, show the Tribunal any relevant documents you have and, if you wish, call witnesses. HMRC will also attend, and they may put their

case, produce documents and call witnesses at the hearing. The hearing will be informal, and the tribunal will usually tell you what it has decided at the end of the hearing.

Standard and Complex categories

When we have notified HMRC that you have made an appeal against a decision in the Standard and Complex categories, HMRC have 60 days to provide a statement of case to the tribunal. The statement of case will contain similar information to that described above for the default paper category, though the facts and issues are likely to be much more complex. As with default paper cases, when HMRC have prepared the statement of case they will send a copy to you.

You will normally have 42 days from receipt of the statement of case from HMRC in which to provide to the tribunal and HMRC a list of the documents which you will rely on at the tribunal hearing. HMRC also have to provide a list of documents and copy their list to you. The tribunal may also make any other direction at this time as to what may be required of you, and may determine that your case requires more intensive case management. You will have the opportunity to express your views on how your case should be managed.

15. When and where will my appeal be heard?

Hearings in the tax tribunal take place at a network of venues across the UK and we will arrange your appeal, where possible, at a venue which is local to you.

If your appeal is categorised as basic, standard or complex, you should attend your hearing. For more information about the process of informing you of your hearing, please see **paragraph 16** below.

16. Notification of Hearing

If your appeal is to be decided at a hearing, we will write to you notifying you of the date, time and venue of your hearing. We will give you at least 14 days notice of a hearing, unless both you and HMRC agree to a shorter period. However, we will usually give at least a month's notice.

You should tell us immediately in writing if the date we set for your tribunal hearing is not convenient and give the reasons why you cannot attend. We will then write to you to tell you whether your postponement request has been granted or not. For appeals in the Standard and Complex categories, we will ask you in advance about dates which are inconvenient for you. In these cases, the tribunal will be less willing to agree to a postponement, though it will do so for good reason, such as sudden illness.

Appellants in the Basic category appeals will usually be asked to attend at either 10:00 or 14:00 on the day of the hearing. In the Standard and Complex categories you will be given a set time to attend and the case may last a number of days.

The time to arrive at the venue is given in your notice of hearing letter, and it is the latest time by which you should arrive at the tribunal venue. If you are likely to be late for your hearing, please telephone us and we will relay a message to the tribunal.

For further information of what can happen at your hearing, please refer to the leaflet 'At your hearing'.

17. Withdrawals of appeals

You can withdraw your appeal at any time. Should you wish to withdraw your appeal, you should write to us immediately. If HMRC decide to concede the matter in dispute, they will write to both the tribunal and you.

What type of appeals does the Tax Tribunal deal with?

The tax tribunal deals with appeals against decisions about tax made by HMRC. These include:

Direct tax

- income tax
- corporation tax
- capital gains tax
- national insurance contributions
- statutory payments
- inheritance tax
- petroleum revenue tax
- student loans
- stamp duty land tax
- tax collected under Pay as You Earn and the Construction Industry Scheme

Indirect tax

- value added tax (VAT)
- customs duty
- excise duties including:
 - alcoholic liquor duties
 - hydrocarbon oils duties (ie petrol, diesel, heating fuel etc)
 - tobacco products duty
 - bingo duty
 - gaming duty
 - general betting duty
 - lottery duty
 - pool betting duty
 - remote gaming duty
- aggregates levy
- air passenger duty
- climate change levy
- insurance premium tax
- landfill tax

The tax tribunal also deals with appeals against decisions made by HMRC in relation to the Money Laundering Regulations 2007. The above list contains the most common types of HMRC decisions.

If you need this leaflet in an alternative format, e.g. large font, Braille or in Welsh Language, or require hard copies of our leaflets, please telephone **0300 123 1024**.